IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.879 OF 1990

1.Arjuna Krishna Patil
2.Jyotiba Krishna Patil
3.Laxman Krishna Patil. ...Appellants

vs.

The State of Maharashtra ...Respondent

Mr.S.V.Marwadi with Mr.Vikramsinh Yadav for the Appellants
Mr.U.V.Nikam,A.P.P. for State

CORAM: A.S.OKA,J.
DATE OF HEARING THE LAST ARGUMENTS: DECEMBER 15,2006,
DATE OF PRONOUNCEMENT OF THE JUDGMENT: FEBRUARY 23,2007.

JUDGMENT:

1. By this Appeal the Appellants have taken exception to the Judgment and Order dated 30th November 1990 passed by the learned 3rd Additional Sessions Judge, Kolhapur. The Appellants have been convicted for offence under section 304 (Part-I) read with section 34 of the Indian Penal Code. The Appellants have been sentenced to suffer R.I. for 7 years and to pay fine of Rs.1000/- each. In default of payment of fine, the Appellants have been directed to undergo R.I. for six months.

2. The case of the prosecution is that the deceased Devaba Nana Kamble and P.W.No.1 Santu Nana Kamble were real brothers. Some agricultural land belonging to Krishna Patil, father of the Appellants-accused was in possession of the deceased Devaba. The said land was known as Tasari. There was a

litigation between the deceased and the said Krishna over the said land. However, at the intervention of the village Panchas there was a settlement between them. It was agreed that both Devaba and Krishna should remain in possession of 10 gunthas of land each out of the said land. As per the settlement, the said Krishna Patil agreed to execute a sale deed in respect of the said land in favour of the said deceased Devaba. However, the sale deed could not be executed as permission was necessary. The sale deed remained to be executed in favour of the deceased Devaba and therefore, the dispute between the parties remained as it is.

3. On 10th December 1989, when the deceased Devaba was proceeding to the said land known as Tasari for irrigating the sugar-cane crop raised by him, the Appellants along with their brother Namdev Krishna Patil assaulted Devaba at about 8.00 or 9.00 a.m. with an axe and a sickle. P.W.No.3 Sidu Sankpal and P.W.NO.9 Sidgonda Appa Patil were having land adjacent to the disputed land. The said Sidu while returning from his land heard the noise of moaning from the sugar-cane crop raised in the said land and accordingly after hearing the noise of moaning, he informed about it to the P.W.No.2 Sakharam Patil who was the police patil of the village. According to the said Sakharam, P.W.No.9 Sidgonda Patil, P.W.No.3 Sidu and one Shrikant came to the field of the deceased. They saw that the deceased Devaba was lying in the sugar-cane crop and he had sustained injuries to his neck and

ear. P.W.No.2 Sakharam Patil made an enquiry with the said Devaba. Deceased Devaba informed him that sons of Krishna Patil assaulted him with an axe and a sickle on account of land dispute. Thereafter, the Police Patil returned to the village and informed about the incident to the brother of the deceased (P.W.No.1-Santu Nana Kamble). Thereafter, P.W.No.1 along with the sons of P.W.No.10 Dharma Kamble came to the field. P.W.No.1 made enquiry with the said Devaba who replied that sons of Krishna had assaulted him with an axe and a sickle on account of a land dispute. By a bullockcart, Police Patil, P.W.No.1 and others carried the said Devaba to police Station at Murgud at the distance of two kilometres from village Kurni. An entry was made in the station diary by P.W.No.11 Head Constable Shinde and a requisition letter was issued to C.P.R. Hospital. Accordingly, P.W.No.1 took Devaba to C.P.R. Hospital at Kolhapur and after admitting him, returned to the police station for filing the complaint. On 11th December 1989, a dying declaration of deceased Devaba was recorded. Initially, an offence under section 307 read with section 34 of the said Code was recorded. Devaba expired on 12th December 1989 as a result of injuries sustained by him. Thereafter, section 302 of the said Code was applied.

4. The learned Counsel for the Appellants has taken me through the notes of evidence. Before going to the submission made by the learned Counsel for the Appellants, it will be necessary to deal with the evidence of the prosecution

witnesses. P.W.No.1 Santu Nana Kamble, the elder brother of the deceased, stated that on the date of incident, he along with his son and one Dharma were working in the field at about 9.00 or 10.00 a.m. in the village Kurni. At that time P.W.No.2 Sakharam Patil met him and informed him that Devaba was lying in the sugar-cane crop and he had sustained injuries to his head. Accordingly, he along with his son and Dharma (P.W.No.10) went towards the field of Krishna which was being cultivated by deceased Devaba. He stated that the said Devaba was lying in the field in injured condition. He stated that he gave him water. He stated that Devaba was moaning and had sustained injuries on his back, left ear and on the neck. On a query made by him, Devaba replied that sons of Krishna had assaulted him with an axe and sickle. The said Krishna had four sons. He disclosed the names of the sons as Laxman, Arjun, Namdeo and Jotiba. The witness stated that he was not able to identify the accused persons present in the court by their first names. However, he stated that the accused were the sons of Krishna Patil. The witness further deposed that they called a bullockcart and carried the said Devaba in injured condition to Murgud police station. On the basis of the letter given by the police, they carried Devaba in a motor car to C.P.R. Hospital, Kolhapur. After the Doctor started treatment on Devaba in the hospital, he returned to the police station for lodging the complaint. He stated that on the third day from the date of incident, his father died in the hospital. He stated that there was a litigation pending

between the said Devaba with the accused on account of agricultural land.

5. In the cross examination, he stated that he was not able to give the exact nature of the terms agreed between Krishna and Devaba. He denied the correctness of the suggestion that the said Devaba was not in a condition to talk. He admitted that he stated before the police that sons of Krishna Patil attacked Devaba. He stated that he was unable to state the reasons as to how the said portion does not appear in his statement at Exh.19. He stated that he gave water to Devaba. He admitted that he was unable to state as to why the said aspect is not found in his statement.

6. P.W.No.2 Sakharam was at the relevant time working as a police patil. He stated that he knew both Devaba and father of the Appellants. He stated that he also knew the Appellants. He stated that Devaba was in possession of the land owned by Krishna as a mortgagee. He stated that the said land was known as Tasari and it was a Inam land. He stated that the litigation between Devaba and Krishna was decided in favour of Krishna. He stated that total area of the disputed land was 20 gunthas. He stated that before panchas of the village, it was agreed that 10 gunthas of land will be given to Devaba and balance 10 gunthas will be given to Krishna. It was agreed that Krishna should execute a Sale Deed in respect of 10 gunthas of land in favour of Devaba. The witness

further stated that as the said land was ‘Sanadi Inam’ land, a permission was required for execution of the sale deed. He stated that Krishna did not execute the sale deed in favour of Devaba and deceased Devaba continued to remain in possession of the said land.

7. He stated that on the date of incident, P.W.No.9 Sidgonda came to his house at about 10.a.m. and informed him that some person was moaning in sugarcane crops in the land known as Tasari which was in possession of Devaba. He stated that he along with P.W.No.3 Siddu, one Shrikant Patil and P.W.No.9 Sidgonda went to the land and found that Devaba was lying in the sugarcane crop. He found that Devaba had sustained injuries on his hand, neck and ear. He stated that Devaba demanded water and he gave him water. When enquired about the names of the assailants, Devaba informed him that sons of Krishna Patil had assaulted him. Devaba also stated the names of the persons assaulted him with an axe and a sickle. He thereafter went back to the village and informed about the incident to P.W.No.1 Santu. He stated that he made an arrangement for a bullockcart and took the bullockcart to the field. He stated that all of them carried Devaba to Murgud police station. He stated that as the condition of Devaba was serious, police gave a letter to C.P.R. hospital, Kolhapur. He stated that P.W.No.1 Santu, Tukaram and P.W.No.10 Dharma Kamble took the deceased Devaba to C.P.R. hospital by a motor car. He stated that Devaba expired on 12th December 1989,

while he was under the treatment in the hospital. Out of four sons of Krishna, he identified three sons viz.Laxman, Arjun and Jotiba.

8. In the cross examination he admitted that as the Khabari Book is required to be maintained by him, he was under an obligation to make a noting as regards commission of a cognizable offence in the said book. He stated that in case of the present crime, he did not make any such entry. He stated that the settlement between Devaba and Krishna was not actually implemented by handing over the possession of the disputed land. He stated that he was unable to tell the reason why it is not mentioned in his police statement that Devaba told him that sons of Krishna had assaulted him. He stated that when Devaba was taken to the Police Station, there were three other persons with him and police made an enquiry with them about the incident. He stated that he reached the police station at 11.00 a.m. and he might be there up to 5.00 p.m. He admitted that his son Sidharth had a quarrel with one of the Appellants i.e. Laxman. He, however, denied the suggestion that there was a settlement between Laxman and the said Sidharth and the said Laxman agreed to pay some amount to Sidharth. He denied that due to strained relationship with Krishna he was deposing falsely.

9. P.W.No.3 Siddu stated that he knew both Devaba and Krishna. He stated that there was a dispute between Krishna

and Devaba over the agricultural land. He stated that on the date of incident, he was working in his field. He stated that at that time he saw the sons of Krishna viz.Jotiba , Laxman and Namdev having axe in their hands and one of them was armed with a sickle in his hand. He stated that they came from the sugarcane crop. He stated that on the way back to the village he met Sakharam Patil, P.W.No.2. He stated that along with P.W.No.2 and Shrikant Patil he went to the field. At that time, they noticed that Devaba had sustained injuries and he was moaning and was demanding water. He stated that Devaba informed them that sons of Krishna had assaulted him. He disclosed the names of the sons of Krishna as Jotiba, Laxman, Arjun and Namdev. He stated that they assaulted him with an axe and a sickle. He identified the Appellants who were present in the court. He stated that the P.W.No.1 Santu also asked Devaba about the incident. He stated that Devaba informed P.W.No.1 Santu that he was attacked by the sons of Krishna viz.Jotiba, Laxman, Arjun and Namdev with an axe and a sickle. He stated that the relationship between Krishna and Devaba were strained and the sons of Krishna had tried earlier to assault Devaba on two occasions and that they were giving threats to Devaba.

10. In the cross examination he denied the suggestion that he had filed a complaint against the accused Arjun. He stated that he was having personal knowledge in respect of the pending litigation between the said Devaba and Krishna. He

admitted that there were two political groups in the village Kurni and Krishna belongs to group headed by Vikramsingh Ghadge. He denied the suggestion that he belongs to the group headed by one Sadashiv Mandlik. He stated that he had stated before the police that Devaba has been assaulted by the sons of Krishna Patil. He however stated that he could not assign any reason why the said portion was not mentioned in his police statement. He denied the suggestion that he was on inimical terms with Krishna.

11. P.W.No.4 Shamrao Shankar Sutar was at the relevant time working as Nayab Tahsildar in the office of Tahsildar. He stated that on 11th December 1989, a request was made by the police for recording dying declaration of Devaba. He stated that Devaba was admitted in C.P.R. hospital, Kolhapur. He stated he made an enquiry with the Medical Officer in respect of the person whose dying declaration was to be recorded. He stated that he satisfied himself that Devaba was in a position to speak. He stated that some persons were in the room till starting of recording of statement. He stated that he has recorded the version of deceased Devaba. He asked only one question to Devaba and recorded his statement as he replied. He stated that Devaba put his thumbmark on his statement in his presence. He stated that as there was some injury on the right hand of Devaba, he had to obtain his thumbmark. In the cross examination, he stated that when he visited the C.P.R. hospital, Kolhapur for recording the dying declaration, he

made enquiry with the Medical Officer about the person concerned. After discussing with the Medical Officer, he was satisfied that the said Devaba was in a position to talk. He stated that before recording the dying declaration, he did not collect any information in respect of the injuries sustained by the said Devaba. He stated that the Medical Officer had certified that Devaba was in a position to give a statement. He stated that time of 15 to 20 minutes was required for recording the statement of Devaba. He proved the dying declaration in his evidence.

12. Dr.Ramdas Devappa Mane, P.W.no.5 performed the post mortem on the dead body of the deceased Devaba. He described the external injuries on the person of the deceased. He stated that there was no injury to head of the deceased. He described in detail the external injuries on the person of the deceased. He stated that there was no fracture of skull though the brain was congested. He stated that cause of death was "shock due to haemorrhage and right side haemothrax". He stated that the external injuries referred to by him in his deposition on the person of the Devaba were possible with axe and sickle which were before the court as articles Nos.9,10 and 11. In the cross examination he stated that the blood from the pleural can be removed. He stated that if the patient could have been treated within time and if the medical aid would have been given to him, he could have been saved.

13. P.W.No.6 Tukaram Dnyanu Patil stated that he along with Narayan Patil were called by Murgud police station to the land known as Tasari. He was a signatory to the scene of offence panchnama. He stated that police attached sugarcane leaves and mud in his presence and the panchnama was recorded. He proved the panchnama in his evidence. He also identified the articles attached by the police. There is nothing relevant in his cross examination.

14. P.W.No.7 Laxman Patil was a witness to the alleged discovery of axe (two in number) and in particular, a sickle. He stated that Arjun Patil who was in custody of the police was present in the court. He stated that the said Arjun made disclosure statement and showed willingness to produce the aforesaid articles which he had hidden in sugarcane leaves in the field. He stated that Memorandum to that effect was written and was signed by him and others as witnesses. He stated that accused Arjun led them and the police to his field in village Kurni. He stated that accused Arjun produced articles hidden by him in the sugarcane leaves. The witness identified the said articles and proved the panchnama under which the articles were attached.

15. In the cross examination, he denied that he has been cited as a witness by the police in several cases. He stated that he was called by the police at about 12.30 p.m. on 5th December 1989. He stated that the time required for writing

memorandum was of 30 to 45 minutes. He stated that after writing the memorandum within 10 to 15 minutes, they proceeded to the village Kurni by a police jeep. He denied that police jeep stopped in front of the house of the accused. He stated that he was unable to explain as to why in the panchnama it is stated that police vehicle stopped near the house of the said Arjun. He stated that he was unable to state as to why the police have not stated in the memorandum that accused Arjun showed willingness to produce an axe.

16. P.W.No.8 Dr.Ajay Chandrakant Chougule was on duty as a casualty Medical Officer when Devaba was brought to C.P.R. hospital at Kolhapur on 10th December 1989. He produced X-rays of the skull and chest of Devaba taken on that day. He stated that there was no fracture of skull. He stated that when Devaba was brought to the hospital, he was in the state of shock. He described 14 injuries on the person of the said Devaba. He identified the entries made in the case papers in his handwriting. He stated that on 11th December 1989, Devaba was conscious. He stated that he himself had recorded his blood pressure. He stated that when the Taluka Executive Magistrate visited the hospital on 11th December 1989 at about 12.30 p.m., he himself examined Devaba in his presence and found that the condition of Devaba was sound and he was in a position to give a statement. He stated that there is an entry to that effect and he himself signed to that effect on the case papers. He stated that after the Executive

Magistrate recorded a statement of Devaba, he again examined Devaba and he accordingly issued a certificate on the dying declaration. He identified his signature on the certificate on the dying declaration. He described in detail the injuries on the person of the deceased. He stated that the injuries referred by him on the person of Devaba were possible by weapons which were articles 9,10 and 11. He stated that the injury No.4 (incise wound and penetrating wound in left supraclanicular fossa 2 c.m. X 0.5 c.m.) depth was sufficient in ordinary course of nature to cause a death. The cumulative effect of all the injuries referred by him was sufficient to cause a death. He stated that on 12th December 1989, Devaba died at about 2.15 a.m. He stated that in the hospital proper treatment was given to Devaba but he could not be saved. He stated that blood transfusion was also given to Devaba. He stated that when he lastly examined Devaba on 11th December 1989 at about 6.15 p.m., his condition was satisfactory. In the cross examination he stated that due to injury No.4, there was a haemorrhage. He stated that haemorrhage condition of the patient can be improved by giving him blood. He stated that though on 10th December 1989 when Devaba was brought to the hospital, he was unconscious, he recovered and became conscious after the treatment. He admitted that he has not written on the case papers an entry regarding recording of the dying declaration. He stated that on 11th December 1989 till 6.15 p.m. the lungs of Devaba were normal. He denied the correctness of the suggestion that he did not examine Devaba

when the dying declaration was recorded.

17. P.W.No.9 Sidgonda Appa Patil deposed that he was working in his field on the date of the incident and his field is adjacent to the land of Krishna. He stated that he heard the noise of moaning from sugarcane crop which was standing on the field of Devaba. He stated that he went to the police patil Shri Sakharam Patil and informed him about the incident. He stated that he himself, police patil and Sidu Sankpal and Shrikant came to the field. He stated that they found that in the sugarcane crop, Devaba was lying in injured condition and was moaning. When the police patil enquired with him, Devaba disclosed that sons of Krishna assaulted him. He stated that Devaba was taken by a bullock cart to the hospital at Murgud. He identified the accused present in the court. In the cross examination, he stated that deceased Devaba and Siddu belong to the group headed by one Mandlik and the Appellants were belonging to the group headed by Vikram. He admitted that there was a dispute in between him and accused in respect of Babhul tree standing between his land and the land owned by the said Krishna.

18. P.W.No.10 Dharma Rama Kamble stated that Sakahram Patil informed him that Devaba was lying in the sugarcane crop in injured condition. He stated that he himself, Tukaram and Siddu went to the field where Devaba was lying. They gave him water and Police Patil asked Devaba as to how he sustained

injuries. Devaba stated that the sons of Krishna assaulted him with axe and a sickle. He stated that the attack was on account of the land dispute. He stated that Devaba sustained injuries to his head and neck.

19. In the cross examination, he admitted that P.W.No.1 Santu was his relative. He stated before the police that Devaba disclosed the names of the four sons of Krishna. He stated that he was unable to state as to why the police have not recorded the said statement in said manner. He was unable to explain as to how it is not recorded in his statement that Devaba had told them that sons of Krishna had attacked him on account of land dispute. He stated that while lifting Devaba for keeping him in the bullock cart, their clothes and hands were stained with blood. He stated that he showed the said blood stained cloths to the police.

20. P.W.No.11 Appa Krishnaji Shinde was the Head Constable attached to Murgud Police station at the relevant time. He stated that at 12.30 noon on 10th December 1989, P.W.No.1 Santu brought his brother Devaba in injured condition. He stated that he forwarded the said Devaba to C.P.R. hospital, Kolhapur by giving Yadi (a requisition letter). He stated that the P.W.No.1 Santu stated that he would admit Devaba in the hospital and would thereafter came back to the police station for filing the complaint. Therefore, he did not immediately record the statement of Santu. He stated that

after Devaba admitted in the hospital, Santu came back to the police station and his statement was recorded which was registered as a F.I.R. In the afternoon when he directed that Santu should be taken to the hospital, he had taken an entry in the station diary which was in his own handwriting. He proved the said entry in the station diary.

21. In the cross examination, he admitted that when Devaba was in the police station, he was in unconscious condition. He stated that the relatives of Devaba who were accompanying him were not in a position to give statement. He stated that after considering the injuries sustained by Devaba, he thought that some cognizable offence has taken place. On the basis of oral information given by Santu, he made an entry in the station diary. He stated that as there was no complaint he could not reduce information relating to the offence in writing.

22. P.W.No.12 Bhiku Shankar Gokhale deposed about the drawing of discovery panchnama. He stated that he took further steps in the matter of investigation.

23. P.W.no.13 Marutrao Rajaram Deshmukh stated that on 11th December 1989 he took over the investigation from the Head Constable. He recorded the statements of various witnesses and he arrested the accused persons. He described the manner in which the accused Arjun made a disclosure statement. He

described as to how the articles were sent to Chemical Analyser and he referred to the report of the Chemical Analyser. In the cross examination, certain omissions in the statements of the witnesses recorded by him were brought on record.

24. Shri Marwadi for the Appellants submitted that even according to the version of the witnesses, deceased Devaba did not specifically disclose the names of the Appellants while he was lying in the field. He stated that one of the witnesses has stated that deceased Devaba disclosed the names of the sons of Krishna. He stated that Krishna had four sons and none of the prosecution witnesses have ascribed any specific role to any of the four sons of Krishna. He submitted that there could not have been conviction of the Appellants as no specific role has been ascribed to any of the Appellants.

25. He stated that there was a gross delay in recording the F.I.R.. He stated that Police Patil and other witnesses were in the police station at 12.30 p.m. However, no F.I.R. was recorded at their instance. The F.I.R. was recorded only in the evening after P.W.No.1 Santu came back from the hospital. He submitted that there is a gross delay in recording the F.I.R. He stated that relevant prosecution witnesses were together right from the afternoon till evening and therefore, they had an opportunity to decide and to deliberately frame the accused. Placing reliance on the decision of the Apex

Court in case of Bijoy Singh and another vs. State of Bihar [(2002) 9 S.C.C. page 147], he submitted that gross delay in recording the F.I.R. was sufficient to acquit the Appellants. He submitted that the deceased had a dispute with Krishna and that is the reason why he had falsely implicated the sons of Krishna. He submitted that recovery of axe and a sickle was itself doubtful. He submitted that some of the witnesses have deposed that deceased had injury over his head. P.M.Notes and the medical evidence is totally silent about it. He submitted that benefit of doubt deserves to be granted to the Appellants. He invited my attention to the dying declaration. He stated that dying declaration discloses that four sons of Krishna assaulted the accused by stick and a sickle. He stated that in the dying declaration the deceased had stated that a stick and a sickle were used as weapons for assault. However, none of the other witnesses have stated about the use of stick as a weapon for assault. He stated that the deceased had stated in the alleged dying declaration that there may be four sons of Krishna who had assaulted him. He stated that the deceased himself was not sure as to how many persons assaulted him. He submitted that the said dying declaration does not inspire confidence and same cannot be the basis of the conviction of the Appellants. He submitted that the Appellants are entitled to order of an acquittal. The learned A.G.P supported the impugned Judgment and order and has pointed out that there are no infirmities in the case of the prosecution.

26. I have considered the submissions. The evidence of P.W.No.1,P.W.No.2, P.W.No.3, P.W.No.9 and P.W.No.10 is very consistent as regards assault made by the sons of Krishna. P.M.Notes and the evidence of P.W.No.8 Dr.Ajay established the injuries on the person of the deceased. The evidence of Dr.Ajay and the evidence of Dr.Mane is very consistent as regards the injuries on the body of the deceased. In the evidence of P.W.NO.3, Sidu has stated that at the time of incident, he saw the sons of Krishna carrying axe in their hand and one of them having a sickle in his hand coming from the sugarcane crop. There is no cross examination made on this aspect. Thus, there is no reason to discard the version of P.W.No.3 that in the morning on the relevant date he saw the sons of Krishna carrying weapons as aforesaid.

27. It is true that the witnesses have deposed that the deceased stated that sons of Krishna assaulted him. In the dying declaration deceased had stated that in the morning on the relevant date he was assaulted by the sons of Krishna. Much capital was sought to be made by Shri Marwadi appearing for the Appellants of the fact that in the dying declaration it is recorded that Krishna may be having four sons. I have read the original Marathi dying declaration. The said dying declaration, if read in its entirety, shows that the deceased stated that sons of Krishna assaulted him and they may be four in number. The prosecution witnesses have identified the

Appellants in the court.

28. The deceased sustained 13 injuries most of which are of grievous nature. The version of deceased Devaba is that all of them assaulted him by a sickle and a stick. It is true that none of the other witnesses have deposed about the use of a stick as a weapon for assault. However, merely because in the dying declaration a reference has been made to the sticks, evidentiary value of dying declaration is not lost.

29. Shri Marwadi, submitted that around 12.30 in the noon the Police Patil and two other witnesses were in the police station. In fact, P.W.No.2 has stated that when they reached the police station along with deceased Devaba, police made enquiry about the incident. Submission of Shri Marwadi is that the Police ought not to have waited for a long time till late in the evening and in fact they should have recorded the F.I.R. immediately. He submitted that the police Patil candidly admitted that he has not made any entry of the incident in the Khabari Book which is being maintained him. It will be necessary to refer to the evidence of Investigating Officer. P.W.No.11 has stated that looking to condition of the deceased, brother of the deceased Santu (P.W.No.1) was perplexed and stated that he would file the complaint after coming back from the hospital. P.W.No.13 Maruti Deshmukh stated that none of the persons were in a mood to give a statement. It is not in dispute that immediately after taking

Yadi, P.W.No.2 and others took the deceased to hospital at Kolhapur and immediately thereafter the treatment was started. The P.W.No.1 came back to the police station and his statement was recorded which is the F.I.R.. Looking to his serious condition, the first priority was to send Devaba to a hospital for saving his life. After admitting him in hospital, the P.W.No.1 came back to Police Station. The decision relied upon by Shri Marwadi in case of Bijoy Singh (supra) will have no application to the facts of the case. In my view, the evidence regarding presence of the Appellants at the relevant time in the vicinity in the land in possession of the deceased, the explanation for delay in lodging the F.I.R. given by witnesses and the consistent version of the witnesses will not make the delay in lodging the F.I.R. fatal. There is nothing on record to show that as a result of delay, the Appellants were falsely implicated. Therefore, the said ground of delay will not help the Appellants.

30. Apart from the recovery of the articles at the instance of the one of the accused, there is other substantive evidence on record to bring home the guilt of the Appellants. The said evidence is in the form of consistent version of the witnesses and the dying declaration of the deceased recorded by an Executive Magistrate.

31. Perusal of the impugned Judgment shows that the learned Trial Judge has considered the material evidence on record and

has recorded a finding of guilt. Shri Marwadi tried to submit that there is complete absence of motive as admittedly the dispute between the Krishna and Devaba was settled. This submission cannot be accepted as the witnesses have deposed that the settlement or compromise could not be materialised as the said Krishna did not execute the conveyance in favour of the deceased Devaba. In fact, the witnesses have admitted that the dispute continued as a result of failure of Krishna to execute the sale deed in favour of the deceased.

32. All the relevant witnesses have stated that the deceased disclosed that sons of Krishna assaulted him. The presence of the accused is established. In my view, there is no error in the view taken by the learned trial Judge as regards participation of the Appellants in the offence. In so far as nature of the offence is concerned, it will be necessary to refer to injuries found on the person of the deceased. It must be noted here that there were as many as 13 injuries on the person of the deceased. The said injuries read thus :

1) Sutured wound over face (Lt) side of cheek 2 c.m. away from the angle of mouth extended transcersaly backwards over the out-put measuring 15 c.m. in length. On opening the would it was bone deep parovid glared cut, the neck vessels muscles and nerves cut.

2) Sutured wound over Rt. side supra-claviodar -- (illegible) 2 c.m. in length. After opening it on polpation it opens into Rt. Pleural cavity.

3) Sutured wound over neck in the midline 2 c.m.

4) Sutured wound over (Rt) shoulder 2 c.m. in length.

5) Sutured wound over Rt. shoulder 4 c.m. Transverse.

6) Sutured wound part to above would 5 c.m. in length

7) Sutured wound over Rt. shoulder 2 c.m. medial to No. (6) 5 c.m. in length.

8) Sutured would over Neck on (Lt.) side 5 c.m. in length.

9) Sutured wound neck (Lt.) side 5 c.m. in length just lat. to wound No. (7).

10) Sutured wound over neck 3 c.m. Lat to injury No. (7).

11) Sutured wound over back in the midline transversely 5 c.m. in length.

12) Sutured wound over delfoid tubrocity of rt. shoulder 5 c.m. in length.

13) Sutured wound over rt. side of on ulner as pect 2 c.m. in length from wound No.3 to 13 are muscle deep.

33. The Appellants have used weapons like axe and sickle. Looking to the nature of the injuries sustained by the deceased and the opinion of the Doctors examined before the Court, the offence under section 304 (Part-I) is established.

34. At the time of commission of offence, respective ages of Appellants were 20,24 and 22. Considering the young ages of the Appellants and considering the fact that from the year 1990 they were enlarged on bail, R.I. for 7 years imposed by the Trial Court deserves to be reduced. In my view, the substantive sentence deserves to be reduced to 5 years R.I.

35. Hence, I pass the following order :

i) Order of conviction passed against the Appellants is confirmed. However, the order of sentence is modified only to the extent that the substantive sentence will be R.I. for 5 years instead of 7 years.

ii) Rest of the impugned Judgment and Order stands as it

is.

iii) The Appellant will surrender to bail for undergoing the remaining sentence.

. On the prayer made by the Advocate for the Appellants, time of ten weeks from today is granted to the Appellants to surrender and to undergo the sentence.

JUDGE